

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Implementation of the
Telecommunications Act of 1996:Telemessaging, Electronic Publishing, and
Alarm Monitoring Services

)
)
)
)
)
)

CC Docket No. 96-152

DISPATCHED BY

NOV 12 2 30 PM '99

FCC MAIL SECTION

ORDER ON RECONSIDERATION

Adopted: November 3, 1999

Released: November 9, 1999

By the Commission:

I. INTRODUCTION AND BACKGROUND

1. On March 21, 1997, the Commission adopted the *Alarm Monitoring Order* implementing the alarm monitoring provisions contained in section 275 of the Communications Act.¹ Section 275 prohibits Bell Operating Companies (BOCs)² from providing alarm monitoring service until February 8, 2001, although it exempts from this prohibition those BOCs that were providing alarm monitoring service as of November 30, 1995.³ In the *Alarm Monitoring Order*, the Commission clarified the definition of the term "alarm monitoring service" and established the manner in which it will apply the nondiscrimination provisions of section 275(b). In this Order, we address a petition for reconsideration or clarification of the *Alarm Monitoring Order* filed by Southwestern Bell Telephone Company (SBC).

2. As part of its determination regarding the scope of the term "alarm monitoring service," the Commission enunciated the test it would use in assessing whether a BOC was "engaged in the provision of" alarm monitoring service in violation of section 275(a).⁴ As an initial matter, the Commission determined that the prohibition on the provision of alarm monitoring services did not "flatly prohibit BOCs from entering into arrangements to act as sales agents on behalf of alarm monitoring

¹ *Implementation of the Telecommunication Act of 1996: Telemessaging, Electronic Publishing and Alarm Monitoring Services*, CC Docket No. 96-152, Second Report and Order, 12 FCC Rcd 3824 (1997) (*Alarm Monitoring Order*).

² The term Bell Operating Company is defined in 47 U.S.C. § 153(4).

³ 47 U.S.C. § 275(a).

⁴ Section 275(a) states that "No Bell Operating Company or affiliate thereof shall engage in the provision of alarm monitoring services before the date which is 5 years after the date of enactment of the Telecommunications Act of 1996." 47 U.S.C. § 275(a).

services providers.”⁵ At the same time, however, the Commission recognized that there may be instances where a BOC is not directly providing alarm monitoring service, but the interests of the BOC and an alarm monitoring service provider are so intertwined that the BOC itself may be considered to be “engag[ed] in the provision” of alarm monitoring service.⁶ In making this assessment, the Commission concluded that it would “examine sales agency and marketing arrangements between a BOC and an alarm monitoring company on a case-by-case basis to determine whether they constitute the ‘provision’ of alarm monitoring service.”⁷ In evaluating such arrangements, the Commission determined that it would take into account a variety of factors, including whether the terms and conditions of a sales agency or marketing arrangement are made available to other alarm monitoring companies on a nondiscriminatory basis and the manner in which the BOC is being compensated for its services.⁸

3. SBC filed a petition for reconsideration or clarification of the Commission’s *Alarm Monitoring Order*.⁹ SBC states that the *Alarm Monitoring Order* did not articulate how a regulatory commitment to make a sales agency or marketing arrangement available on a nondiscriminatory basis “was germane to the ‘provision’ analysis.”¹⁰ SBC contends that, in assessing whether a BOC is providing alarm monitoring services in violation of section 275(a), the Commission need not, and should not, consider whether the terms and conditions of a BOC’s sales agency or other marketing arrangement with a particular alarm monitoring service provider are available to other alarm monitoring service providers on a nondiscriminatory basis.¹¹ SBC asserts, however, that if the Commission continues to find a BOC’s relationship with other alarm monitoring service providers pertinent in determining whether a BOC is “engag[ed] in the provision” of alarm monitoring services, it should only consider whether the arrangement with a particular provider is non-exclusive, not whether it is available on a nondiscriminatory basis.¹² According to SBC, “such non-exclusivity would ensure that both the BOC and the provider would remain free to do business with others,” and thus “not ‘intertwined’ with one another . . .”¹³

4. In the alternative, if the Commission retains nondiscrimination as a factor in its analysis, SBC argues that the Commission should clarify that nondiscrimination is not an absolute requirement for an acceptable sales agency relationship. Rather, says SBC, the Commission should expressly affirm that

⁵ *Alarm Monitoring Order*, 12 FCC Rcd at 3841 ¶ 37.

⁶ *Id.* at 3841-42, ¶ 38.

⁷ *Id.*

⁸ *Id.*

⁹ SBC Petition for Reconsideration or Clarification, filed May 5, 1997. BellSouth Corporation and U S WEST, Inc., filed comments supporting SBC’s petition.

¹⁰ *Id.* at 5

¹¹ *Id.* at 2-5. See also BellSouth Comments 2-4; U W WEST Reply Comments at 2-4.

¹² *Id.* at 5; contra U S WEST Reply Comments at 3.

¹³ *Id.*

nondiscrimination is not an outcome-determinative factor, but rather is only one of a multitude of factors that the Commission will consider in reviewing sales agency and other marketing arrangements.¹⁴ In SBC's view a BOC should be free to demonstrate that based on factors other than nondiscrimination "it has a legitimate sales agency relationship with an alarm service provider without an undue 'intertwining' of interests."¹⁵

5. The Alarm Industry Communications Committee (AICC) filed an opposition to SBC's petition, arguing that the statute's outright ban on the BOC's provision of alarm monitoring services for a period of five years requires, as both a statutory and policy matter, that any sales agency or other marketing arrangement be made available on a nondiscriminatory basis in order to restrain adequately the BOCs' incentive and ability to enter into arrangements that constitute the provision of alarm monitoring services.¹⁶ As for SBC's alternative request, AICC argues that SBC should be told, "clearly and simply," that it cannot discriminate among alarm monitoring providers in its provision of marketing or billing and collection services. AICC asserts that there are numerous legal and policy reasons to forbid discrimination and none in its favor.¹⁷

II. DISCUSSION

6. As the Commission stated in the *Alarm Monitoring Order*, we must assess on a case-by-case basis whether a BOC's interests are so intertwined with an alarm monitoring service provider that the BOC itself may be considered to be "engag[ed] in the provision" of alarm monitoring service in violation of section 275(a). In making such an assessment, the Commission will consider a variety of factors to inform our ultimate determination as to whether a BOC's sales agency or other marketing arrangement causes its interests to be so intertwined with the interests of a particular alarm monitoring service provider that the BOC itself may be considered to be "engag[ed] in the provision" of alarm monitoring service.

7. In this Order, we clarify our rationale for taking into account whether a BOC's sales agency or other marketing arrangement is available on a non-discriminatory basis in assessing whether the BOC is engaged in the "provision" of alarm monitoring service. We strongly disagree with SBC that the availability of sales agency or other marketing arrangements on a nondiscriminatory basis has no relevance in determining whether a BOC is engaged in the provision of alarm monitoring services. While the Commission may consider a variety of other factors as well, the presence of sales agency or other marketing arrangements with multiple alarm monitoring service providers is an indication that the BOC's interests in such arrangements are limited only to the provision of the sales agency or marketing component of the service. Alternatively, to the extent that a BOC makes a sales agency or other marketing arrangement available to any alarm monitoring service provider on the same terms and

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ AICC Opposition at 3-6.

¹⁷ *Id.* at 6.

conditions, such availability is evidence that the BOC's interests are independent of, and not intertwined with, a particular alarm monitoring service provider. Therefore, in the absence of actual sales agency or other marketing arrangements with multiple alarm monitoring service providers, a commitment to make such arrangements available on a nondiscriminatory basis would be evidence – to be considered along with other factors – that a BOC's interests are independent of, and distinct from, any particular alarm monitoring service provider. Accordingly, we do not disturb our previous finding that the availability of sales agency or other marketing arrangements on a nondiscriminatory basis is relevant to whether a BOC is engaged in the provision of alarm monitoring services.

III. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, that pursuant to sections 1-4, 201-205, 214, 275, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 214, 275, 303(r), this *Order on Reconsideration* in CC Docket No. 96-152 IS ADOPTED.

IT IS FURTHER ORDERED, that the petition for reconsideration filed by Southwestern Bell Telephone Company IS DENIED in its entirety, as described herein

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary